

It is a bill for a foreclosure and sale of certain mortgaged premises, the mortgage having been executed to secure the payment of various promissory notes, falling due at different dates, and of these a schedule is annexed to the mortgage, which is exhibited with the bill, which was filed on the 16th of May, 1849, when a portion, but not all, of the notes had matured.

It appears by the answer, and by a copy of the deed filed among the proceedings in the cause, that on the day of the date of the execution of the mortgage, the said William McMakin and John F. Forrest, partners in trade, and who as such, were the makers of the notes designed to be secured by the mortgage, by way of more fully securing the payment of the money, executed to the same party, a bill of sale of their stock in trade and fixtures, in trust, as in the instrument is expressed.

These goods, it appears, have been sold by the grantee in the deed, for something upwards of nineteen hundred dollars, and of the purchase money there is now stated to remain due, about five hundred dollars. The answer takes the ground, that the value of the goods, when they were taken possession of by the grantee, far exceeded the amount due upon the notes at the time the bill in this cause was filed; but there is evidence, that the price obtained for them by the grantee, was a fair one, and that the sale was made with advice and consent of the grantors.

Before the precise sum for which the real estate mentioned in the deed of McMakin and wife, should be decreed to be sold, can be ascertained satisfactorily, it appears to me necessary, there should be a decree to account. The calculation may be rather a complicated one, or at all events, there would without an account, be some difficulty in fixing upon the precise sum, by the payment of which, the defendants might prevent a sale of the property.

The case is essentially different from that of *David et al. vs. Grahame*, 2 Har. & Gill, 94, where the court dispensed with a preliminary account, because the answer admitted distinctly the claim as stated in the bill, and claimed no credits, other than those which the bill set forth.

It is not now meant to be decided, whether if it shall appear